



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,576	12/28/2001	Brad Baker	30687-CIP	6108

5179 7590 09/29/2003

PEACOCK MYERS AND ADAMS P C  
P O BOX 26927  
ALBUQUERQUE, NM 871256927

EXAMINER
----------

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/040,576	BAKER, BRAD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure of "Paint Pop" in view of Gramlich, Kern and Law.

The brochure discloses Paint Pop which comprises candy in the shape of a paint roller, a packet comprising candy powder and a paint tray. The candy powder is emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

The Paint Pop differs from the claimed product in that it is consisted of a tray and a roller, not a can and a paint brush as claimed. The tray of the Paint Pop does not have a lid and does not have multiple compartments containing confectioneries of different colors, flavors, types. The edible candy portion does not have multiple parts of different flavors, colors, types and translucencies.

Art Unit: 1761

Gramlich discloses a wet paint and roller storage unit in which the tray has a lid so that the painter does not have to transfer the paint back into the can when he/she stops. When the painter wants to resume painting, he/she will merely have to open the lid and resume painting. (See col. 3)

Kern discloses a roller tray with cover thereon for protecting material in the tray against drying out so that the cover may be hinged open for a painting shift and may be hinged closed on the tray between shifts to avoid drying out of the material in the tray. (See col.1 lines 55-61)

Law discloses an egg decorating kit. The kit comes as one integral unit; however, there are multiple compartments in the unit that contain different dye chambers. There are also multiple paint receptacles. (see col. 3)

The claimed product differs from the prior art product in the shape. Applicant moves from one conventional design shape to another conventional design shape. Paint tray, paint can, paint brush and pain roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been obvious to one skilled in the art. As to the inclusion of a lid, it would have been obvious to one to include a lid on the paint tray of the Paint Pop product in accordance with the teaching of Gramlich and Kern. Gramlich and Kern teach to include a lid on a paint tray so that the material in the tray will not dry out and that the painter does not have to transfer the paint back to the can when he/she temporarily stops painting. The Paint Pop is an adaption of a real inedible product into an edible product to provide novelty. Thus, it would have been obvious to one skilled in the art to also adopt the teaching of

Art Unit: 1761

Gramlich and Kern to provide a parallel function to a painter. The lid will enable the consumer to protect the roller candy and the powder candy from drying out or spilling when the consumer wants to take a break from eating and he/she can simply open the lid when consumption is resumed. The lid will also protect the roller and powder packet from falling out before consumption. It would also have been obvious to one skilled in the art to compartmentalize the tray to have multiple compartments when desiring to put different flowable materials in the product. The concept of dividing one integral unit into plurality of compartments so that different materials can be put into one unit is so well known in the art as exemplified by the teach of Law. When different compartments are created, it would have been obvious to put flowable materials having different flavor, type, taste, color etc.. to create a multitude of product in one unit. The placing of different materials in the different compartments would have been obvious because that is the purpose of creating different compartments. It would have been obvious to make the candy portion to have different color, type, flavor etc... to give a single product having different taste. This concept is well known in the art and would have been obvious to one skilled in the art. For example, there are lollipops that have rainbow of colors; there are gums that have different stripes of coloring and flavoring; there are candies with multiple portions having different color, taste, appearance etc.... It would also have been obvious to add a tab on the lid for ease of opening; this is well known in the art. As to the indentation, it is not seen how this make the claimed product differs from the prior art. It would have been obvious to one skilled in the art to manufacture

Art Unit: 1761

the product in a way that is most effective to produce the product. The Paint Pop product is packaged and the roller is attached to the tray through the packaging.

Claims 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure of "Paint Pop" in view of Gramlich and Kern.

The brochure discloses Paint Pop which comprises candy in the shape of a paint roller, a packet comprising candy powder and a paint tray. The candy powder is emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

The Paint Pop differs from the claimed product in that it is consisted of a tray and a roller, not a can and a paint brush as claimed. The tray does not have a lid. The edible candy portion does not have multiple parts of different flavors, colors, types and translucencies.

Gramlich discloses a wet paint and roller storage unit in which the tray has a lid so that the painter does not have to transfer the paint back into the can when he/she stops. When the painter wants to resume painting, he/she will merely have to open the lid and resume painting. (See col. 3)

Kern discloses a roller tray with cover thereon for protecting material in the tray against drying out so that the cover may be hinged open for a painting shift and may be hinged closed on the tray between shifts to avoid drying out of the material in the tray. (See col.1 lines 55-61)

Art Unit: 1761

The claimed product differs from the prior art product in the shape. Applicant moves from one conventional design shape to another conventional design shape. Paint tray, paint can, paint brush and pain roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been obvious to one skilled in the art. As to the inclusion of a lid, it would have been obvious to one to include a lid on the paint tray of the Paint Pop product in accordance with the teaching of Gramlich and Kern. Gramlich and Kern teach to include a lid on a paint tray so that the material in the tray will not dry out and that the painter does not have to transfer the paint back to the can when he/she temporarily stops painting. The Paint Pop is an adaption of a real inedible product into an edible product to provide novelty. Thus, it would have been obvious to one skilled in the art to also adopt the teaching of Gramlich and Kern to provide a parallel function to a painter. The lid will enable the consumer to protect the roller candy and the powder candy from drying out or spilling when the consumer wants to take a break from eating and he/she can simply open the lid when consumption is resumed. The lid will also protect the roller and powder packet from falling out before consumption. It would have been obvious to make the candy portion to have different color, type, flavor etc... to give a single product having different taste. This concept is well known in the art and would have been obvious to one skilled in the art. For example, there are lollipops that have rainbow of colors; there are gums that have different stripes of coloring and flavoring; there are candies with multiple portions having different color, taste, appearance etc.... It would also have been obvious to add a tab on the lid for ease of opening; this is well known in

Art Unit: 1761

the art. The Paint Pop is packaged and the roller is attached to the tray through the packaging.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868.

The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
LIEN TRAN  
PRIMARY EXAMINER  
